

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAN 13 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

CERVERA AUTOMOTIVE GROUP
LLC, DBA Veracom Ford; ROBERT
BRANZUELA,

Respondents.

No. 13-73977

NLRB No. 20-CA-095744
NO DISTRICT

ORDER

Before: WARDLAW, CHRISTEN, and MILLER, Circuit Judges.

Respondents' objections (Docket Entry Nos. 94, 97) to the October 16, 2020 Report and Recommendation are overruled. We adopt the findings in the Report and Recommendation that Respondents Cervera Automotive Group LLC, dba Veracom Ford ("Veracom") and Robert Branzuela failed to comply with the court's December 17, 2013 judgment and August 31, 2018 contempt adjudication, Branzuela failed to comply with the July 16, 2020 order to appear at the July 27, 2020 status conference, and counsel Patrick W. Jordan, Esq., failed to comply with the court's May 14, 2019 and January 20, 2020 orders. We grant the Board's

motions for default contempt adjudication (Docket Entry Nos. 64, 72), strike Respondents' answer (Docket Entry No. 65), and grant the Board's petition (Docket Entry No. 58) to hold Respondents Veracom and Branzuela in contempt of the court's orders.

On December 11, 2020, the National Labor Relations Board ("Board") filed an "informative motion" (Docket Entry No. 92) that sets forth undisputed information demonstrating that Respondent Veracom ceased operation on or about January 31, 2020.

Because Veracom is no longer in business, the remedies related to Veracom's contempt in the Report and Recommendation are moot. Moreover, Branzuela cannot comply with the collective bargaining requirements in the court's 2018 contempt adjudication by providing the Union with the information it requested on August 31, September 17, and September 21, 2018, or by providing the Union with dates to bargain. Thus, any noncompliance fines against Branzuela for these two violations of the 2018 contempt adjudication cannot have any coercive effect and would be punitive in nature. *See Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994) (fines for a "completed act of disobedience," on the other hand, are generally regarded as a criminal sanction, which requires that a court provide heightened procedural protections that attach to

criminal contempt proceedings); *see NLRB v. Ironworkers Local 433*, 169 F.3d 1217, 1220-21 (9th Cir. 1999).

The recommendation that the court order Branzuela to pay a \$5,000 noncompliance fine for his failure to pay \$2,000 as ordered by the 2018 contempt adjudication has coercive power, however, because Branzuela has failed to pay the fine. Such fines are appropriate to secure compliance with the court's orders. *See Ironworkers Local 433*, 169 F.3d at 1221. Accordingly, we adopt in part the Report and Recommendation to impose a \$5,000 noncompliance fine for Branzuela's violation of the 2018 contempt adjudication.

The court orders that:

1. Respondent Branzuela shall pay to the Board the following contempt fines under the following conditions:
 - a. Respondent Branzuela shall pay to the Board a noncompliance fine of \$5,000 for his violation of the 2018 contempt adjudication, and \$2,000 in fines previously imposed by the 2018 contempt adjudication, for total fines of \$7,000.
 - b. The fines imposed in this paragraph shall be paid within 15 days after the date of this contempt adjudication, unless Respondent Branzuela files in this court a written statement, under penalty of perjury, showing categorically and in detail that Respondent is unable to pay any portion of the fines, and supported by detailed financial statements. Within 10 days after Respondent's written statement of inability to pay, if any is filed, the Board may file a response. The amount of fines then shall be fixed by a future order of the Court.

2. Respondent Branzuela shall pay the Board's costs, expenses, and reasonable attorneys' fees, calculated at the prevailing District of Columbia market rates, incurred in the investigation, preparation, presentation, and final disposition of this proceeding. The costs, expenses, and fees, unless agreed to by the parties, shall be fixed by a future order of the Court upon submission by the Board of a certified statement of costs, expenses, and fees and any opposition to the statement by Respondent.
3. Monetary sanctions in the amount of \$2,000 are imposed on counsel Jordan for his violation of the court's May 14, 2019 and January 20, 2020 orders.
4. Monetary sanctions in the amount of \$5,000 are imposed on Branzuela for his violation of the court's July 16, 2020 order.

IT IS SO ORDERED.